

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	Examiner: C.R. Tate
)	
P. Grandics et al.)	Group Art Unit: 1616
)	
Serial No.: 10/670,131)	Docket No.: 8036-003-US-3
)	
Filed: September 22, 2003)	Date Transmitted: March 22, 2006
)	
For: METHOD FOR CANCER THERAPY))	
USING HERBAL EXTRACTS))	

RESPONSE TO RESTRICTION REQUIREMENT

Honorable Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant responds to the Restriction Requirement mailed March 13, 2006, as follows:

I. THE RESTRICTION REQUIREMENT

Restriction to one of the following inventions was required under 35 U.S.C. § 121:

Group I is claims 1-19, drawn to a therapeutic composition for treating cancer comprising an extract of the herbal plant Soma and other non-herbal ingredients, and a method of treating cancer therewith, classified in Class 424, subclass 725, for example.

Group II is claims 20-38, drawn to a non-herbal therapeutic composition comprising various non-herbal ingredients, and a method of treating cancer therewith, classified in Class 424, subclass 535, for example.

The inventions have been considered distinct because the invention of Group I requires Soma and the invention of Group II does not. Therefore, according to the Examiner, the inventions have acquired a separate status in the art and require independent searches.

II. RESPONSE TO RESTRICTION REQUIREMENT

In response to the Restriction Requirement, Applicants elect with traverse the invention of Group I, claims 1-19, for prosecution on the merits.

The Restriction Requirement is traversed on the following grounds:

Firstly, the Examiner has not met the burden for demonstrating the necessity for restriction. M.P.E.P. § 803 requires for restriction both: (1) that the inventions are independent or distinct as claimed; and (2) that there would exist a “serious burden” on the Examiner if all of the claims were examined in one application. These requirements have not been met.

In fact, the subject matter of all Groups is sufficiently related to avoid restriction, because there would be no “serious burden” on the Examiner if all of the claims were examined together in one application. The essence of the invention is the discovery that cancer has an inflammatory component and that cancer can be treated by measures that mitigate the inflammation. These measures employ natural products and avoid the side effects that frequently occur with conventional radiotherapy or chemotherapy.

This discovery, therefore, relates the activity that underlies the subject matter of the claims of all groups and reduces the search burden on the Examiner.

Moreover, the subject matter of the inventions is sufficiently interrelated that no serious burden on the Examiner would exist if all of the claims were examined on the merits. This is because the art involved, if any relevant art exists, largely overlaps because the relevant art would be concerned with mitigating the inflammatory processes involved with cancer.

Applicants do not traverse the restriction requirement on grounds of lack of patentable distinctness. Rather, Applicants traverse the restriction requirement on the grounds that the inventions of Groups I and II are sufficiently related that restriction is not properly required, despite the possible existence of patentable distinctness.

Therefore, the Examiner is respectfully requested to withdraw the Restriction Requirement and allow the inventions of Groups I and II to be examined together on the merits.

The deadline for response to the Restriction Requirement and Requirement for Election of Species is April 13, 2006. Therefore, this response is being filed in a timely manner. This response is being transmitted by the EFS-Web System as initiated on March 16, 2006.

III. CONCLUSION

In conclusion, Applicants elect with traverse the invention of Group I, claims 1-19, for prosecution on the merits. The Examiner is respectfully requested to withdraw the Restriction Requirement and examine all pending claims, namely, claims 1-38, on the merits.

If any issues remain, the Examiner is respectfully requested to telephone the undersigned at (858) 450-0099 x302.

Respectfully submitted,

Date: March 22, 2006

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